

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BLOCKCHAIN MINING SUPPLY AND
SERVICES LTD.,

Plaintiff,

—against—

SUPER CRYPTO MINING, INC. n/k/a
DIGITAL FARMS, INC. and DPW
HOLDINGS, INC. n/k/a AULT ALLIANCE,
INC.,

Defendants.

Civil Action No. 1:18-cv-11099-ALC

EXHIBIT QQ

**TO THE DECLARATION OF RICHARD S. MANDEL IN SUPPORT
OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2017

Commission file number 1-12711

DPW HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Exhibit 58

Delaware

(State or other jurisdiction of incorporation or organization)

94-1721931

(I.R.S. Employer Identification Number)

48430 Lakeview Blvd Fremont, CA

(Address of principal executive offices)

94538-3158

(Zip Code)

(510) 657-2635

(Registrant's telephone number, including area code)

Securities registered under Section 12(b) of the Act:

Title of Each Class

Common Stock, \$0.001 par value per share

Name of each exchange on which registered

NYSE American

Securities registered under Section 12(g) of the Act: ☐ None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding year (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding year (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Non-accelerated filer ☐

(Do not check if a smaller reporting company)

Accelerated filer ☐

Smaller reporting company ☒

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of June 30, 2017, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was \$6,831,098 based on the closing sale price as reported on the NYSE Market. Such determination should not be deemed an admission that such directors, officers, or 5 percent beneficial owners are, in fact, affiliates of the registrant.

There were 43,562,860 shares of common stock outstanding as of April 13, 2018.

Documents incorporated by reference: None

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act). Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2017. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated 2013 Framework. The 2013 Framework is expected to help organizations design and implement internal control in light of many changes in business and operating environments since the issuance of the original framework, broaden the application of internal control in addressing operation and reporting objectives, and clarify the requirements for determining what constitutes effective internal controls. Our management has concluded that, as of December 31, 2017, our internal control over financial reporting was not effective.

This Annual Report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by our independent registered public accounting firm pursuant to a provision under the Dodd-Frank Wall Street Reform and Consumer Protection Act which grants a permanent exemption for non-accelerated filers from complying with Section 404(b) of the Sarbanes-Oxley Act of 2002.

Changes in Internal Control over Financial Reporting

During the most recent fiscal quarter 2017 there were no significant changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION.

None

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The following table sets forth the positions and offices presently held by each of our current directors and executive officers and their ages:

Name	Age	Position and Offices Held with the Company	Served as a Director and Officer Since
Milton C. Ault, III ⁽¹⁾	48	Chief Executive Officer, Chairman of the Board and Director	2017
William B. Horne ⁽²⁾	49	Chief Financial Officer and Director	2016
Amos Kohn	58	President and Director	2003
Robert O. Smith ⁽³⁾ ⁽⁵⁾	74	Director	2016
Moti Rosenberg ⁽⁵⁾	69	Director	2015
Jeffrey A. Bentz ⁽⁴⁾ ⁽⁵⁾	58	Director	2018

- (1) Effective March 16, 2017, Mr. Ault was appointed to the Board.
- (2) On October 13, 2016, William B. Horne was appointed to the Board. Pursuant to a securities purchase agreement dated September 5, 2016 by and among the Company, Philou Ventures, and Telkoor. Philou Ventures has the right to appoint four members to the Board of Directors.
- (3) On September 22, 2016, Mr. Robert O. Smith was appointed to the board.
- (4) On January 24, 2018, Mr. Jeffrey A. Bentz was appointed to the board.
- (5) Independent Director and Member of the Audit, Compensation and Nominating and Governance Committees.

Each of the directors named above will serve until the next annual meeting of our shareholders or until his respective successor is elected and qualified. Subject to the terms of applicable employment agreements, our executive officers serve at the discretion of our Board.

Mr. Milton C. Ault, III

On March 16, 2017, Mr. Ault was appointed Executive Chairman of the Board and on December 28, 2017, Mr. Ault was appointed Chief Executive Officer. Mr. Ault is a seasoned business professional and entrepreneur that has spent more than twenty-seven years identifying value in various financial markets including equities, fixed income, commodities, and real estate. Mr. Ault founded on February 25, 2016 Alzamend Neuro, Inc., a biotechnology firm dedicated to finding the treatment, prevention and cure for Alzheimer's Disease and has served as its Chairman since. Mr. Ault has served as Chairman of Ault & Company, a holding company since December 2015, and as Chairman of Avalanche International Corp since September 2014, a company whose shares are registered under the Exchange Act. Since January, 2011, Mr. Ault has been the Vice President of Business Development for MCKEA Holdings, LLC, a family office. Through this position, Mr. Ault has consulted for a few publicly traded and privately held companies, providing each of them the benefit of his diversified experience, that range from development stage to seasoned businesses. He was the President, Chief Executive Officer, Director and Chairman of the Board of Zealous, Inc. from August 2007 until June 4, 2010 and again from February 2011 through May 1, 2011. Mr. Ault was a registered representative at Strome Securities, LP, from July 1998 until December 2005, where he was involved in portfolio management and worked on several activism campaigns including Taco Cabana, Jack In The Box (formerly Foodmaker), and 21st Century Holdings Co. Mr. Ault became majority shareholder of Franklin Capital Corp and was elected to its board of directors in July 2004 and became its Chairman and Chief Executive Officer in October 2004 serving until January 2006, and again from July 2006 to January 2007. In April 2005, the company changed its name to Patient Safety Technologies, Inc. (OTCBB:PSTX, OTCQB:PSTX) ("PST") and purchased SurgiCount Medical, Inc. Stryker Corporation (NYSE:SYK) acquired PST at the beginning of 2014 in a deal valued at approximately one hundred twenty million dollars (\$120,000,000). PST's wholly owned operating subsidiary, SurgiCount Medical, Inc., is the company that developed the SafetySponge® System; a bar coding technology for inventory control that aims to detect and prevent the incidence of foreign objects left in the body after surgery. We believe that Mr. Ault's business background demonstrates he has the qualifications to serve as one of our directors and as Chairman.

Amos Kohn

Mr. Kohn has served as a member of our board of directors since 2003, as our President since 2008. Mr. Kohn also served as our Chief Executive Officer from 2008 to December 2017. From March 2011 until August 2013 and again from July 2017 until January 2018, Mr. Kohn also served as interim Chief Financial Officer. Mr. Kohn has more than 20 years of successful global executive management experience, including multiple C-level roles across private and established publicly-traded companies. Mr. Kohn has successfully managed cross-functional teams, driven corporations to high profitability, built customer loyalty and led businesses through expansion and sustained growth. His areas of expertise include operations, technology innovation, manufacturing, strategic analysis and planning and M&A. Mr. Kohn was Vice President of Business Development at Scopus Video Networks, Inc., a Princeton, New Jersey company that develops and markets digital video networking products (2006-2007); Vice President of Solutions Engineering at ICTV Inc., a leading provider of network-based streaming media technology solutions for digital video and web-driven programming, located in Los Gatos, California (2003-2006); Chief Architect at Liberate Technologies, a leading company in the development of a full range of digital media processing for telecom and cable TV industries, located in San Carlos, California (2000-2003); and Executive Vice President of Engineering and Technology at Golden Channel & Co., the largest cable television multiple-systems operator (MSO) in Israel, where he had executive responsibility for developing and implementing the entire nationwide cable TV system (1989-2000). Mr. Kohn holds a degree in electrical and electronics engineering and is named as an inventor on several United States and international patents. We believe that Mr. Kohn's extensive executive-level management experience in diversified industries, including, but not limited to, power electronics, telecommunications, cable television, broadcast and wireless, as well as his service as a director on our board since 2003, give him the qualifications and skills to serve as one of our directors.

Mr. Horne has served as a member of our board of directors since October 2016. On January 25, 2018, Mr. Horne was appointed as our Chief Financial Officer. Prior to his appointment as our Chief Financial Officer, Mr. Horne served as one of our independent directors. He has served as the Chief Financial Officer of Targeted Medical Pharma, Inc. (OTCBB: TRGM) since August 2013. Mr. Horne is a director of and Chief Financial Officer to Avalanche International, Corp., a company whose shares of common stock are registered under the Exchange Act. Mr. Horne previously held the position of Chief Financial Officer in various companies in the healthcare and high-tech field, including OptimisCorp, from January 2008 to May 2013, a privately held, diversified healthcare technology company located in Los Angeles, California. Mr. Horne served as the Chief Financial Officer of Patient Safety Technologies, Inc. (OTCBB: PSTX), a medical device company located in Irvine, California, from June 2005 to October 2008 and as the interim Chief Executive Officer from January 2007 to April 2008. In his dual role at Patient Safety Technologies, Mr. Horne was directly responsible for structuring the divestiture of non-core assets, capital financings and debt restructuring. Mr. Horne held the position of Managing Member & Chief Financial Officer of Alaska Wireless Communications, LLC, a privately held, advanced cellular communications company, from its inception in May 2002 until November 2007. Mr. Horne was responsible for negotiating the sale of Alaska Wireless to General Communication Inc. (NASDAQ: GNCMA). From November 1996 to December 2001, Mr. Horne held the position of Chief Financial Officer of The Phoenix Partners, a venture capital limited partnership located in Seattle, Washington. Mr. Horne has also held supervisory positions at Price Waterhouse, LLP and has a Bachelor of Arts Magna Cum Laude in Accounting from Seattle University. We believe that Mr. Horne's extensive financial and accounting experience in diversified industries and with companies involving complex transactions give him the qualifications and skills to serve as one of our directors.

Robert O. Smith

Mr. Smith serves as one of our independent directors. Previously, he served as a member of our Board of Directors from November 2010 until May 2015, and served as a member of our Advisory Board from 2002 until 2015. He is currently a C-level executive consultant working with Bay Area high-tech firms on various strategic initiatives in all aspects of their business. From 2004 to 2007, he served on the Board of Directors of Castelle Corporation. From 1990 to 2002, he was our President, Chief Executive Officer and Chairman of the Board. From 1980 to 1990, he held several management positions with Computer Products, Inc., the most recent being President of their Compower/Boschert Division. From 1970 to 1980, he held managerial accounting positions with Ametek/Lamb Electric and with the JM Smucker Company. Mr. Smith received his BBA degree in Accounting from Ohio University. We believe that Mr. Smith's executive-level experience, including his previous service as our President, Chief Executive Officer and Chairman of the Board, his extensive experience in the accounting industry, and his service on our Board from November 2010 until May 2015, give him the qualifications and skills to serve as one of our directors.

Mordechai Rosenberg

Mr. Rosenberg serves as one of our independent directors. He has served as an independent consultant to various companies in the design and implementation of homeland security systems in Europe and Africa since 2010. From 2004 to 2009, he served as a special consultant to Bullet Plate Ltd., a manufacturer of armor protection systems, and NovIdea Ltd., a manufacturer of perimeter and border security systems. From 2000 to 2003, Mr. Rosenberg was the general manager of ZIV U.P.V.C Products Ltd.'s doors and window factory. Mr. Rosenberg is an active reserve officer and a retired colonel from the Israeli Defense Force (IDF), where he served for 26 years and was involved in the development of weapon systems. In the IDF, Mr. Rosenberg served in various capacities, including platoon, company, battalion and brigade commander, head of the training center for all IDF infantry, and head of the Air Force's Special Forces. Mr. Rosenberg received a B.A. in History from the University of Tel Aviv and a Master of Arts in Political Science from the University of Haifa in Israel. We believe that Mr. Rosenberg's business background give him the qualifications to serve as one of our directors.

Mr. Jeffrey Bentz

Mr. Bentz is an experienced businessman who has served since 1994 as President of North Star Terminal & Stevedore Company, a full-service stevedoring company located in Alaska and whose major areas of business include terminal operations and management, stevedore services, and heavy equipment operations. He also has served as a director and advisor to several private companies and agencies. Mr. Bentz obtained a B.A. in Business and Finance from Western Washington University in 1981. We believe that Mr. Bentz's executive-level experience, including his operational and financial oversight of companies with multiple profit centers and his extensive experience in the real estate and commercial services industries give him the qualifications and skills to serve as one of our directors.

DPW HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)
DECEMBER 31, 2017

U.S. dollars in thousands, except share and per share data

On February 20, 2018, the Company issued a promissory note in the principal face amount of \$900 to an accredited investor. This promissory note included an OID of \$150 resulting in net proceeds to the Company of \$750. The principal and OID on this note was due and payable on March 22, 2018. On March 23, 2018, the parties entered into a new promissory note in the principal amount of \$1,750 for a term of two months, subject to the Company's ability to prepay within one month. The interest rate payable on this new promissory note shall be twenty percent per thirty calendar days, payable in a lump sum on the maturity date. The Company also issued to the lender a warrant to purchase 1,250,000 shares of common stock at an exercise price of \$1.15 per share, pursuant to a consulting agreement. The principal amount of the new promissory note consisted of net proceeds of \$1,000 and the cancellation of the principal of \$750 from the February 20, 2018 promissory note. The interest on the February 20, 2018 note in the amount of \$150 was paid to the lender.

On February 26, 2018, the Company issued a 10% promissory note in the principal face amount of \$330 to an accredited investor. This promissory note included an OID of \$30 resulting in net proceeds to the Company of \$300. The principal and accrued interest on this note is due and payable on April 12, 2018, subject to a 30-day extension available to the Company.

On March 27, 2018, the Company issued a 10% promissory note in the principal face amount of \$200 to an accredited investor. The principal and accrued interest on this note is due and payable on March 29, 2018.

On March 23, 2018, the Company entered into a securities purchase agreement to sell and issue a 12% promissory note and a warrant to purchase shares 300,000 shares of common stock to an accredited investor. The promissory note has been issued at a 10% original issue discount. The promissory note is in the principal amount of \$1,000 and was sold for \$900, bears interest at 12% simple interest on the principal amount, and is due on June 22, 2018. Interest only payments are due, in arrears, on a monthly basis commencing on April 23, 2018. The exercise price of the warrant is \$1.15 per share. The promissory note is unsecured by any assets of the Company but is guaranteed by the Company's Chief Executive Officer pursuant to a Guaranty Agreement.

Convertible Promissory Notes

On January 23, 2018, the Company entered into a securities purchase agreement with an institutional investor to sell, for an aggregate purchase price of \$1,000, a 10% Senior Convertible Promissory Notes with an aggregate principal face amount of \$1,250, a warrant to purchase an aggregate of 625,000 shares, subject to adjustment, of the Company's common stock. The promissory note is convertible into shares of common stock at \$2.00 per share, subject to adjustment. The exercise price of the warrant is \$2.20 per share, subject to adjustment.

At The Market Offering

On February 27, 2018, the Company entered into a sales agreement with H.C. Wainwright & Co., LLC ("**HCW**") to sell shares of its common stock, having an aggregate offering price of up to \$50,000 from time to time, through an "at the market offering" program (the "**ATM Offering**") under which HCW will act as sales agent. As of April 16, 2018, we had received net proceeds of \$7,121 through the sale of 6,648,538 shares of our common stock through the ATM Offering.

The offer and sale of the shares through the ATM Offering will be made pursuant to the Company's effective "shelf" registration statement on Form S-3 and an accompanying base prospectus contained therein (Registration Statement No. 333-222132) filed with the SEC on December 18, 2017, amended on January 8, 2018, and declared effective by the SEC on January 11, 2018, and a prospectus supplement related to the ATM Offering, dated February 27, 2018.

DPW HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)
DECEMBER 31, 2017

U.S. dollars in thousands, except share and per share data

The Company will pay to HCW a commission in an amount equal to 5.0% of the gross sales price per share of common stock sold through it as sales agent under the sales agreement. In addition, the Company has agreed to reimburse HCW for certain expenses it incurs in the performance of its obligations under the sales agreement up to a maximum of \$60 and \$5 each calendar quarter.

Other Agreements

On March 8, 2018, Super Crypto Mining, Inc. ("SCM"), the Company's wholly owned subsidiary, entered into an asset purchase agreement with Blockchain Mining Supply & Services Ltd. ("BMSS"). Pursuant to this agreement, SCM has agreed to acquire 1,100 Antminer S9s (the "Miners") manufactured by Bitmain Technologies, Inc. (the "Bitmain"), in connection with SCM's mining operations, from BMSS. Pursuant to the agreement, SCM will pay an aggregate of \$3,200,000 to BMSS for the Miners. The Company intends to fund SCM's acquisition of the Miners through the proceeds derived from its ongoing ATM Offering.

On March 22, 2018, SCM entered into a Master Services Agreement with a U.S. based entity, whereby SCM secured the right to 25 megawatts of power in support of SCM's operations.

On April 13, 2018, the Company and Milton C. Ault, III, the Company's Chief Executive Officer, entered into an Amended and Restated Independent Contractor Agreement pursuant to which the parties thereto agreed to amend and restate that certain Independent Contractor Agreement dated September 22, 2016, by and between the Company and Mr. Ault. In accordance with the terms set forth in the Agreement, Mr. Ault shall continue to serve as the Company's Chief Executive Officer and Chairman of the Board of Directors in consideration of a monthly fee of \$33,333.00, effective November 15, 2017. The Agreement shall terminate on April 30, 2018, and may be renewed on a monthly basis by written agreement between the parties thereto.

Issuances of Common Stock for Services

Between January 1, 2018 and February 7, 2018, the Company issued an aggregate of 1,683,059 shares of its common stock as payment for services to its consultant. The shares were valued at \$3,179, an average of \$1.89 per share.

Issuances of Common Stock upon Exercise of Stock Options

During January 2018, the Company issued a total of 60,000 shares of its common stock upon the cash exercise of options to purchase an aggregate of 60,000 shares of its common stock. These options were issued pursuant to the Company's Plans. The Company received cash of \$98 as a result of these option exercises.